

EXHIBIT 15

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 CASE NO. 1:21-CV-07100-AKH

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3 GEORGE STEINMETZ,
4 Plaintiff,

5 vs.

6 SHUTTERSTOCK, INC. and
DOES 1-10, inclusive,

7 Defendants.

8 -----X

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11 30(b)(6) DEPOSITION VIA ZOOM OF
12 SHUTTERSTOCK, INC. by and through
13 ARTUR ZAMBROWSKI
14 July 14, 2022
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23 Reported by:
24 SARA FREUND, CSR
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July 14, 2022

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July 14, 2022

10:00 a.m.

30(b)(6) DEPOSITION VIA ZOOM OF
ARTUR ZAMBROWSKI, held on the above mentioned
date and time, before Sara Freund, a
Certified Shorthand Reporter and Notary
Public within and for the State of New York.

Page 2

A P P E A R A N C E S:

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437 Madison Avenue - 25th floor

New York, New York 10022

BY: ELEANOR M. LACKMAN, ESQ.

SAMANTHA W. FRANKEL, ESQ.

ALSO PRESENT:

Andrew Raff - inhouse counsel, Shutterstock

A. ZAMBROWSKI

A. No.

Q. In your work at Shutterstock, have you ever gone by a fake name online?

A. Yes. I used an alias.

Q. What aliases have you used?

A. I've used for the most part of my career at Shutterstock.

Q. Have you used any other aliases?

A. No.

Q. Why do you use an alias?

A. I use an alias just to stay anonymous. I do not want individuals reaching out to me on social media platforms. I don't want them to connect with me to try to solve issues; I would rather them contact Shutterstock directly.

Q. Is that a decision you personally made, or is that Shutterstock policy?

A. That is something my team has decided to do.

Q. Who is on your team?

A. My current IT team is Andrew Raff and Heather Shimmin.

Q. Can you spell those names for me?

Redaction per Defendant's request.

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1 A. ZAMBROWSKI

2 A. I don't know.

3 Q. Do you know why she left
4 Shutterstock?

5 A. She got another opportunity, another
6 challenge she wanted to tackle.

7 Q. Have you learned of any other reason
8 why she left Shutterstock?

9 A. No.

10 Q. Do you know where she works now?

11 A. Yes.

12 Q. Where does she work now?

13 A. MMHMM is the name of the company,
14 M-M-H-M-M.

15 Q. Do you know which office she's in,
16 if she's in an office?

17 A. No.

18 Q. So was it Ms. Patel that told you to
19 use a fake name when dealing with
20 Shutterstock business?

21 MS. LACKMAN: Objection to the
22 extent it reveals privileged information.
23 I just want to be cautious. You can
24 answer if you know yes or no; please
25 don't elaborate. We'll take this one

1 A. ZAMBROWSKI

2 step at a time.

3 A. Yes.

4 Q. When she told you to use a fake name
5 online, did she give you any other
6 instructions?

7 A. No.

8 Q. When you were using a fake name on-
9 line for Shutterstock business, who were you
10 communicating with?

11 MS. LACKMAN: Objection, vague.

12 Q. Go ahead.

13 A. With various individuals, copyright
14 owners, models, contributors, customers.

15 Q. Were some of the folks that you
16 communicated with when using the fake name
17 copyright holders who believed that
18 Shutterstock was displaying their work
19 without consent?

20 MS. LACKMAN: Objection, vague.

21 Q. Go ahead.

22 A. Yes.

23 Q. Is the Shutterstock policy regarding
24 using these fake names when dealing with
25 copyright holders in writing anywhere?

1 A. ZAMBROWSKI

2 A. I do not know.

3 Q. Does Shutterstock work with a
4 company named HelloRF?

5 A. I do not know.

6 Q. Does Shutterstock work with a
7 company named TinEye?

8 MS. LACKMAN: Objection, vague.

9 A. I believe so.

10 Q. How long has Shutterstock worked
11 with TinEye?

12 A. I do not know.

13 Q. Is Shutterstock currently working
14 with TinEye?

15 A. I do not know.

16 Q. Did Shutterstock distribute to
17 TinEye a copy of the photograph at issue in
18 this case?

19 MS. LACKMAN: Objection, calls for a
20 legal interpretation, outside the scope.

21 Q. Go ahead.

22 A. TinEye does not obtain any content
23 from Shutterstock.

24 Q. Has a Shutterstock photograph with
25 Shutterstock branding ever appeared on

1 A. ZAMBROWSKI

2 TinEye, to your knowledge?

3 A. Yes.

4 Q. How did that happen?

5 MS. LACKMAN: Objection, calls for
6 speculation, outside the scope.

7 A. Because TinEye is a reverse image
8 software that populated images found on the
9 web.

10 Q. When it does that, does it ever
11 include Shutterstock branding?

12 MS. LACKMAN: Objection, vague,
13 calls for speculation.

14 Q. Go ahead.

15 A. What type of branding?

16 Q. Name and logo?

17 A. Yes.

18 Q. And does the TinEye page also
19 display advertising for Shutterstock in
20 connection with the image?

21 MS. LACKMAN: Objection, vague,
22 outside the scope.

23 A. Yes.

24 Q. Do you know if TinEye displayed the
25 photograph at issue in this case?

1 A. ZAMBROWSKI

2 Q. Go ahead.

3 A. I believe I answered that they're a
4 reverse image platform.

5 Q. Other than what the company is, are
6 you aware of anything related to the
7 relationship between Shutterstock and TinEye?

8 MS. LACKMAN: Objection foundation.

9 A. I do not know.

10 Q. Does Shutterstock take any action to
11 ensure that its photography shows up on
12 TinEye?

13 A. I do not know.

14 Q. Assuming that TinEye does display
15 Shutterstock photography, how does that
16 happen?

17 MS. LACKMAN: Objection, very broad,
18 calls for speculation. You can answer if
19 you know.

20 A. Like I mentioned, they're a reverse
21 image search platform, they search the entire
22 worldwide web, so they will pull Shutterstock
23 imagery, Getty images or any which platform
24 or even personal blogs or websites that would
25 be populated there.

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1 A. ZAMBROWSKI

2 Q. So other than the fact that it's a
3 search engine, do you know anything about how
4 the Shutterstock photography shows up on
5 TinEye?

6 MS. LACKMAN: Objection, asked and
7 answered multiple times.

8 Q. Go ahead.

9 A. TinEye pulls any information on the
10 worldwide web based on the input we give it.

11 Q. Does Shutterstock provide any input
12 or material that allows TinEye to pull
13 Shutterstock photography?

14 A. Only to put in images that are
15 currently on Shutterstock.

16 Q. What is that?

17 A. I'm not sure of the question.

18 MS. LACKMAN: And, again, it's going
19 outside the scope about how TinEye works.

20 Q. When you say TinEye receives
21 something from Shutterstock to ensure that
22 the Shutterstock photography appears on
23 TinEye, what are you referring to?

24 MS. LACKMAN: Objection, misstates
25 the testimony.

Page 34

1 A. ZAMBROWSKI

2 MS. LACKMAN: Objection, vague as to
3 time, outside the scope.

4 A. I don't know.

5 Q. Do you know if the photograph at
6 issue in this case appeared on any site other
7 than Shutterstock due to involvement between
8 that site and Shutterstock?

9 MS. LACKMAN: Objection, calls for
10 speculation.

11 A. Can you repeat the question? I'm
12 not sure I understand.

13 Q. Sure. Let me back up briefly. The
14 photograph that's at issue in this case, did
15 it ever show up on Shutterstock?

16 A. Yes.

17 Q. Did Shutterstock display that
18 photograph and offer to license it to its
19 clients?

20 MS. LACKMAN: Objection, calls for
21 legal interpretation, asked and answered.

22 Q. Go ahead.

23 A. Yes.

24 Q. And other than that use of the image
25 on Shutterstock's website, are you aware of

Page 43

1 A. ZAMBROWSKI

2 the photograph at issue appearing on any
3 other website through involvement between
4 that site and Shutterstock?

5 MS. LACKMAN: Objection, no
6 foundation.

7 A. I don't know.

8 Q. Have you ever looked through your
9 records to see if the photograph appeared on
10 any other sites due to a relationship between
11 that site and Shutterstock?

12 A. Personally, I have not.

13 Q. Do you know if anyone at
14 Shutterstock has?

15 A. I do not know.

16 Q. Looking again at Exhibit 1 here, did
17 you have any involvement with the selection
18 of payment, modification, incorporation or
19 publication of the Steinmetz photograph at
20 issue?

21 MS. LACKMAN: Objection, compound,
22 subject to the same objection I made
23 earlier regarding scope.

24 A. No.

25 Q. Did you approve the Steinmetz

Page 44

1 A. ZAMBROWSKI

2 complaint.

3 Q. Go ahead.

4 A. Could you describe what photograph?

5 Q. The photograph alleged to be used
6 without consent by Shutterstock.

7 A. I'm still not sure I understand the
8 question. Can you rephrase it?

9 Q. Sure. Are you aware that there is a
10 photographer who claims that Shutterstock
11 used his photograph without consent?

12 A. Yes.

13 Q. Who at Shutterstock approved the
14 publication of that photograph?

15 MS. LACKMAN: Same objection,
16 compound, assumes -- there's just no
17 foundation.

18 A. One of our viewers.

19 Q. Do you know who?

20 A. Personally, no.

21 Q. Have you ever looked to find out who
22 that was?

23 A. I've seen their name by looking up
24 this image in particular when we removed the
25 content.

1 A. ZAMBROWSKI

2 Q. Do you recall what the name was?

3 A. No, I do not.

4 Q. When did you look in the system?

5 A. I don't remember.

6 Q. Was it in the last couple of weeks?

7 A. I do not remember.

8 Q. Was it within the last year?

9 A. I do not remember.

10 Q. But it's Shutterstock's

11 understanding that someone at Shutterstock

12 approved the photograph at issue in this case

13 before it was displayed on the E-

14 Shutterstock website, correct?

15 MS. LACKMAN: Objection, calls for a

16 legal interpretation.

17 A. Correct. It was reviewed by a

18 reviewer and determined to be visible on

19 Shutterstock's website.

20 Q. Did you ever review such photography
21 before it's distributed or displayed on the
22 website?

23 MS. LACKMAN: Objection, vague to as

24 to review.

25 A. No.

1 A. ZAMBROWSKI

2 Q. How many reviewers does Shutterstock
3 currently have?

4 A. I do not know the exact number.

5 Q. More than ten?

6 A. I do not know.

7 Q. More than a hundred?

8 A. I do not know.

9 Q. Less than ten?

10 A. I do not know.

11 Q. Do you know if Shutterstock has any
12 reviewers?

13 A. Yes.

14 Q. How do you know that?

15 A. We have a team of review
16 coordinators who manage reviewers.

17 Q. And what do those reviewers do?

18 A. The reviewers review content
19 uploaded to Shutterstock.

20 Q. Why?

21 MS. LACKMAN: Objection to the
22 extent it calls for disclosure of legal
23 information or legal advice. If you have
24 an understanding that doesn't come from
25 counsel, you can answer.

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1 A. ZAMBROWSKI

2 A. The reviewers review content for
3 different types of technical issues, whether
4 that be noise, subject matter. They also
5 review the contributor's uploaded
6 descriptions and metadata, if there is any
7 issues within those whether that be
8 absurdities or curse words or language that's
9 improper.

10 Q. So, if, for example, there are curse
11 words that are improper, will Shutterstock
12 reject and not display the photographs?

13 A. To the best of my knowledge, yes.

14 Q. So is it fair to say that the re-
15 viewers will look at the uploaded photography
16 and decided which of that photography can go
17 on the website?

18 MS. LACKMAN: Objection, misstates
19 testimony and foundation.

20 A. Yes. As we have a specific standard
21 we want to employ with our content being up-
22 loaded, it gives a better customer experience
23 instead of having any piece of content up-
24 loaded.

25 Q. Do you have an estimation of what

Page 50

1 A. ZAMBROWSKI

2 percentage of the content is rejected as
3 violating the standards?

4 MS. LACKMAN: Objection, foundation,
5 outside the scope.

6 A. I do not.

7 Q. Do you know if it's more than ten
8 percent?

9 A. I do not know.

10 Q. But you're certainly aware of
11 Shutterstock rejecting certain photographs,
12 correct?

13 A. Correct.

14 Q. And you said earlier there is a
15 standard. Is that standard set out in a
16 written guideline or a written policy?

17 MS. LACKMAN: Objection to the
18 extent misstates testimony.

19 A. Yes. All reviewers are trained
20 within -- and also we have internal reviewer
21 guidelines that display specific uses,
22 examples.

23 Q. Can you describe for me what the re-
24 viewer guidelines are.

25 A. It is a database that stores

1 A. ZAMBROWSKI

2 policies created by Shutterstock in order to
3 train and teach our reviewers.

4 Q. Are the reviewers to reference those
5 guidelines when deciding whether or not to
6 approve a photograph for display on the
7 Shutterstock site?

8 MS. LACKMAN: Objection, outside the
9 scope.

10 A. Correct.

11 Q. Have you yourself ever seen these
12 guidelines?

13 A. Yes.

14 Q. Do you have a copy of those
15 guidelines?

16 MS. LACKMAN: Objection, vague.

17 A. I personally do not have a copy of
18 the guidelines as they are on an internal
19 website only accessible by certain
20 individuals.

21 Q. Do you have access to the
22 guidelines?

23 A. Yes.

24 Q. When was the last time you looked at
25 the guidelines?

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A. ZAMBROWSKI

A. I do not know exactly.

Q. So is it fair to say as you sit here today that you don't recall taking any steps in response to that demand letter other than reviewing the demand letter?

MS. LACKMAN: Objection, misstates the testimony.

Q. Go ahead.

A. No. I definitely have talked with my manager at that time and also individuals on my team about how to approach this matter.

Q. Who did you speak with?

A. With Andrew Raff and Heather Shimmin.

Q. And you spoke with them in regard to the claim that was set forth in the demand letter that you referenced?

A. To the best of my knowledge, yes.

Q. And what was the substance of that conversation?

MS. LACKMAN: Objection to the extent that it reveals communications and advice with counsel. Mr. Raff is in-house attorney.

1 A. ZAMBROWSKI

2 Q. Go ahead.

3 A. I do not know exactly.

4 Q. Do you recall anything about any of
5 the conversations that you may have had at
6 that time?

7 A. I do not remember.

8 Q. Do you recall doing anything else in
9 response to the demand letter?

10 MS. LACKMAN: Objection, foundation.

11 A. I do not remember.

12 Q. Do you know if the image is still on
13 Shutterstock's website today?

14 A. It is not on Shutterstock's website
15 today.

16 Q. How do you know?

17 A. Because I took action and suspended
18 the content after the review with my team
19 about the documentation provided.

20 Q. To your knowledge, does, quote,
21 suspending the content delete the content
22 from the Shutterstock system?

23 MS. LACKMAN: Objection to the
24 extent misstates prior testimony.

25 A. To the best of my knowledge, it is

1 A. ZAMBROWSKI

2 removed from any public facing, but it's kept
3 internally, so if anyone else tries to upload
4 that similar piece of content, we can flag it
5 instantly and reject that content from ever
6 being on Shutterstock. Also, we have an
7 obligation to a contributor's TOS where the
8 content remains on our servers for a short
9 period of time.

10 Q. So is it fair to say that the
11 photograph alleged to be infringed in this
12 case is still on the Shutterstock system even
13 today?

14 MS. LACKMAN: Objection, vague as to
15 system.

16 A. Personally, I don't believe so, to
17 the best of my knowledge.

18 Q. Is it Shutterstock's position that
19 its partners have also removed the photograph
20 that's claimed to be infringed in this case?

21 MS. LACKMAN: Objection, no
22 foundation.

23 A. What partners?

24 Q. Any of the partner sites that we
25 referenced earlier.

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1 A. ZAMBROWSKI

2 A. Yes. That's exactly what I just
3 said.

4 Q. How long have you been using that at
5 Shutterstock?

6 A. Personally, I've seen it in use my
7 whole time at Shutterstock.

8 Q. And if it returns a match on this
9 pixel comparison, what will Shutterstock do
10 in regards to the contributor?

11 MS. LACKMAN: Objection, outside the
12 scope, vague.

13 A. If there are matches that appear
14 that aren't within the same contributor up-
15 loading, we would reject that piece of
16 content, and if they are a repeat offender of
17 this type of action, we'll disable their
18 content and send them information of why
19 their account is disabled.

20 Q. How many infringing photographs does
21 a contributor have to upload before they are
22 deemed a repeat offender by Shutterstock?

23 MS. LACKMAN: Objection, misstates
24 the testimony, no foundation.

25 Q. Go ahead.

1 A. ZAMBROWSKI

2 A. It varies, between one and three.

3 Q. So is it fair to say that if a
4 contributor uploaded three infringing
5 photographs, they would be deemed a repeat
6 offender?

7 MS. LACKMAN: Objection, no
8 foundation, calls for a legal
9 interpretation.

10 Q. Go ahead.

11 A. Correct. We would review that
12 portfolio and determine to terminate the user
13 or not.

14 Q. And what would you look at to
15 determine whether or not to terminate the
16 user?

17 MS. LACKMAN: Objection to the
18 extent this calls for any understanding
19 that you have from counsel.

20 Q. Go ahead.

21 A. We would review what type of
22 contributor they are. We have business units
23 that upload content that are authorized by
24 other individuals to store and upload their
25 content. We also have aggregators who do

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1 A. ZAMBROWSKI

2 similar work. So we would have to make sure
3 that these individuals are aware of what
4 they're doing.

5 Q. What about for individuals?

6 MS. LACKMAN: Objection, vague.

7 A. For individuals, we would most
8 likely terminate them.

9 Q. Is there any reason why you wouldn't
10 terminate a contributor who uploaded three or
11 more infringing images?

12 MS. LACKMAN: Objection, calls for
13 speculation, calls for a legal
14 conclusion.

15 A. Other than the reasons I previously
16 mentioned, no.

17 Q. And is it the position of
18 Shutterstock that they will terminate the
19 user upon that number of infringing uploads
20 or that they'll suspend the user's account?

21 MS. LACKMAN: Objection, compound,
22 calls for a legal interpretation,
23 misstates testimony.

24 Q. Go ahead.

25 A. I'm not sure what you mean by

Page 65

1 A. ZAMBROWSKI

2 disabling an account and deleting an account?

3 MS. LACKMAN: Objection, calls for
4 speculation, asked and answered.

5 Q. Go ahead.

6 A. It's just different terminology.

7 Q. So is it the same thing?

8 MS. LACKMAN: Objection, asked and
9 answered, badgering. Are you suggesting
10 my client should delete evidence, Scott?

11 Q. Go ahead.

12 A. I don't know.

13 (Whereupon, recess was taken.)

14 MR. BURROUGHS: Let's go back on the
15 record.

16 Q. And you understand, Artur, you're
17 still under oath?

18 A. Yes, correct.

19 Q. Did you get a chance to talk to your
20 counsel on the break?

21 A. Yes.

22 Q. And you're ready to testify again,
23 you can still give your best testimony?

24 A. Correct.

25 Q. Can you tell me in your own words,

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1 A. ZAMBROWSKI

2 what does Shutterstock do?

3 MS. LACKMAN: Objection, vague.

4 A. Shutterstock is a content licensing
5 platform.

6 Q. So is it fair to say that
7 Shutterstock is in the business of licensing
8 photography to third parties?

9 A. Correct.

10 Q. And does Shutterstock receive
11 payment for those licenses?

12 MS. LACKMAN: Objection, vague.

13 A. Correct.

14 Q. Does Shutterstock have a standard
15 fee that it charges or a single standard fee
16 that it charges or a range of fees that it
17 charges for licenses?

18 MS. LACKMAN: Objection, compound.

19 A. To the best of my knowledge, a range
20 of fees, depending on our obligation or the
21 demands.

22 Q. Is it fair to say that the fees also
23 reflect the types of uses that Shutterstock
24 permits under the particular license?

25 MS. LACKMAN: Objection to the

1 A. ZAMBROWSKI

2 Q. Does Shutterstock license out any
3 photography that it owns the copyrights for?

4 A. Shutterstock was actually created by
5 Jon Oringer, who uploaded his own content to
6 be the first pieces of content to be able to
7 be licensed.

8 Q. Other than Jon's content, does
9 Shutterstock license out any of its own
10 photography?

11 MS. LACKMAN: Objection, vague to
12 the extent it calls for a legal
13 interpretation.

14 Q. Go ahead.

15 A. To the best of my knowledge, we do
16 have some agreements where we've wholly owned
17 the pieces of content and licensed them to
18 personal contributor accounts.

19 Q. Does Shutterstock distinguish in its
20 system between copyright artwork that it owns
21 and copyright artwork that its contributors
22 upload?

23 MS. LACKMAN: Objection, foundation,
24 outside the scope.

25 A. Could you rephrase the question?

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1 A. ZAMBROWSKI

2 Q. Sure. Is there any way to know from
3 looking in the Shutterstock system whether a
4 particular piece of content is content for
5 which Shutterstock owns the copyrights as
6 opposed to a third party?

7 A. What system, internally, externally?

8 Q. Any system.

9 A. Externally, no. The individuals
10 create user names based on their own
11 preferences and these user names are not
12 distinctive -- they could be, it could not be
13 I'm not a hundred percent certain.
14 Internally, yes, we can look at whoever it is
15 because we need to store that information.

16 Q. So I'm a visitor to the Shutterstock
17 site and I'm looking for photographs of
18 sunsets, I'm widely served sunset photography
19 by outside contributors and sunset
20 photography for which Shutterstock owns the
21 copyrights?

22 MS. LACKMAN: Objection, outside the
23 scope, calls for speculation.

24 A. Potentially.

25 Q. Is there any way for me to know as a

1

A. ZAMBROWSKI

2

viewer that a particular photograph is a

3

Shutterstock owned photograph as opposed to a

4

third-party photograph?

5

A. To the best of my knowledge, no.

6

Q. Does Shutterstock charge the same

7

fees for third-party content and its own

8

content?

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MS. LACKMAN: Objection, outside the

10

scope.

11

A. What fees?

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Q. License fees.

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A. As mentioned, they charge different

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license fees depending on the license

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obtained.

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Q. Understood. But does that vary

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based on whether or not it's third-party

18

content as opposed to Shutterstock owned

19

content?

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MS. LACKMAN: Objection, outside the

21

scope.

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A. To the best of my knowledge, no.

23

Q. Going back to the time period that

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Shutterstock maintains on its system a copy

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of an allegedly infringing image, can you

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A. ZAMBROWSKI

Shutterstock photography have access to the copy of the photograph that's not public facing, that's maintained by Shutterstock forever?

MS. LACKMAN: Objection, calls for speculation, vague.

A. No, they do not.

MS. LACKMAN: Also misstates testimony. He testified -- just misstates testimony.

Q. In April of 2021, did Shutterstock have a DMCA agent?

MS. LACKMAN: Objection to the extent it calls for a legal interpretation.

A. I'm not sure of the question.

Q. Have you ever heard the term DMCA agent before?

A. Yes.

Q. What's your understanding of that phrase?

A. I do not have an understanding. I've seen the phrase before, though.

Q. So as you sit here today, is it fair

1 A. ZAMBROWSKI

2 to say that you don't know whether or not
3 Shutterstock had a DMCA agent in 2021?

4 MS. LACKMAN: Objection, misstates
5 the testimony, asked and answered, calls
6 for a legal interpretation.

7 A. I do not recall.

8 Q. Do you know if Shutterstock ever had
9 a DMCA agent?

10 A. Yes -- I believe so.

11 Q. Do you know when that started?

12 A. No, I do not.

13 Q. Do you know if Shutterstock
14 currently has a DMCA agent?

15 A. To the best of my knowledge, I
16 believe we do not.

17 Q. How does Shutterstock generate
18 revenue aside from the licenses that we
19 discussed?

20 MS. LACKMAN: Objection, outside the
21 scope, vague.

22 A. I don't know. I'm not a sales
23 individual.

24 Q. Are you involved in making
25 photographs accessible to users of the site?

1 A. ZAMBROWSKI

2 the company?

3 A. I do not.

4 Q. Did Ms. Lee or Mr. Nash have roles
5 similar to the roles you had as the
6 contractor or agent?

7 MS. LACKMAN: Objection, vague.

8 A. I do not know.

9 Q. How do you know that they also re-
10 viewed the DMCA notices?

11 A. Because at the time, they were
12 working for the IP team with Sajal, and Sajal
13 was the individual who was training me to be
14 part of the team, and therein lies what their
15 responsibilities were.

16 Q. Have you ever worked at Shutterstock
17 with an individual named Cash Hamm?

18 A. Personally, no, I don't know.

19 Q. You never heard that name before,
20 right?

21 A. I don't believe so.

22 Q. And Shutterstock, does it have any
23 photographers as employees?

24 MS. LACKMAN: Objection to the
25 extent it calls for a legal

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1 A. ZAMBROWSKI

2 Shutterstock's website.

3 Q. As you testified before,
4 Shutterstock will accept some content and
5 will reject other content, correct?

6 MS. LACKMAN: Objection.

7 A. Correct.

8 Q. And as you review these guidelines,
9 and we're happy to scroll down again if you'd
10 like, do they accurately reflect
11 Shutterstock's policies and procedures?

12 MS. LACKMAN: Objection to the
13 extent it calls for a legal
14 interpretation.

15 A. To the best of my personal
16 knowledge, yes.

17 Q. Let's look at the Review Guidelines
18 section, do you see that?

19 A. Yes.

20 Q. Are the five bullet points in that
21 section the five bullet points that
22 Shutterstock reviews content for in
23 contemplation of displaying material on its
24 website?

25 A. To the best of my knowledge, yes.

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1 A. ZAMBROWSKI

2 Q. So, for example, Shutterstock's re-
3 viewers will review a particular photograph's
4 lighting, focus and noise before deciding
5 whether or not to publish it on the website,
6 correct?

7 A. They would not only look at those
8 factors; there are four other bullet points
9 that they would review.

10 Q. Understood. But that's one area of
11 subject matter that they would review before
12 approval, correct?

13 A. Correct.

14 Q. And Shutterstock's team and
15 employees, before approving a photograph,
16 will look at the metadata, such as the title
17 and key words, before approving a photograph
18 for display on its site, correct?

19 A. That is metadata that is inputted by
20 the contributor.

21 Q. And what does it do when it reviews
22 the metadata before approving it for display
23 on its site?

24 MS. LACKMAN: Objection, misstates
25 testimony.

1 A. ZAMBROWSKI

2 A. Can you rephrase the question?

3 Q. Sure. What does it look for in the
4 metadata when it's deciding whether or not to
5 approve it for use on the site?

6 MS. LACKMAN: Objection, vague. Do
7 you mean if the metadata is photographed?

8 Q. Go ahead.

9 MS. LACKMAN: If you understand.

10 (Simultaneous talk)

11 A. To scope for relevance within the
12 metadata; so if you are submitting a picture
13 of a nine, you are not putting a bar in the
14 metadata.

15 Q. Does Shutterstock maintain that
16 metadata when it makes the photograph
17 available for use on its website?

18 MS. LACKMAN: Objection, vague.

19 Q. What do you mean by maintain?

20 A. Keep it.

21 MS. LACKMAN: Same objection.

22 A. That metadata is viewable within our
23 internal source and also when it is public.

24 Q. So Shutterstock never removes the
25 metadata from the uploaded photograph when it

1 A. ZAMBROWSKI

2 offers it for license on its website,
3 correct?

4 MS. LACKMAN: Objection, no
5 foundation, vague, misstates the
6 testimony.

7 A. No, that is incorrect. All metadata
8 is stripped before uploading -- at the time
9 of uploading, the full metadata is stripped
10 from the content itself, and users are
11 advised to input their own metadata. This is
12 just for consistency factors. Not every
13 single piece of camera or piece of video
14 equipment has the same format. Also, there
15 are times where they have location base
16 within that metadata. We don't want
17 individuals to be -- to basically protect
18 individuals from being stalked or found out.

19 Q. So is it fair to say that
20 Shutterstock strips or removes the metadata
21 from the photographs when they're uploaded to
22 the Shutterstock platform?

23 A. To the best of my knowledge, yes.

24 MS. LACKMAN: Objection, misstates
25 testimony.

1 A. ZAMBROWSKI

2 A. I mentioned this one before, the
3 external buildings, internal buildings,
4 clothing, the branding.

5 Q. What will Shutterstock look for when
6 deciding whether or not to display content
7 based on there being, quote, unquote, similar
8 content?

9 MS. LACKMAN: Objection, vague. To
10 the extent there is legal analysis
11 wrapped up in this, please refrain to
12 discuss. If there isn't, then you can
13 answer.

14 A. It's the content that is taking the
15 same picture but rotating the camera slightly
16 and slightly and it's uploading every single
17 one of those. It is offloading user
18 experience, in my personal opinion.

19 Q. Shutterstock will make that decision
20 at its discretion and reject the content?

21 MS. LACKMAN: Objection, misstates
22 the testimony.

23 A. To the best of my personal
24 knowledge, yes.

25 Q. Does Shutterstock have complete

1 A. ZAMBROWSKI

2 discretion of what gets published on its
3 site?

4 MS. LACKMAN: Objection, calls for a
5 legal interpretation, asked and answered.

6 A. To the best of my personal
7 knowledge, yes, we have a certain threshold
8 that we try to uphold as to keep our
9 contributors more engaged and our customers
10 happy.

11 Q. So when you're looking at content to
12 see if it violates your, quote, standing
13 policy, which would require rejection, what
14 are you looking for?

15 MS. LACKMAN: Objection, outside the
16 scope, calls for speculation.

17 A. That could be a number of things.
18 As I mentioned, taking the same frame and
19 just rotating your camera over and over and
20 uploading five through a hundred of those
21 same images.

22 Q. So folks try to upload Spam content
23 on Shutterstock from time to time, correct?

24 MS. LACKMAN: Objection, vague.

25 A. To the best of my personal

1 A. ZAMBROWSKI

2 knowledge, yes.

3 Q. And Shutterstock will reject that
4 Spam content, correct?

5 A. Correct.

6 Q. That Spam content never shows up on
7 the Shutterstock website, correct?

8 MS. LACKMAN: Objection, calls for
9 speculation.

10 A. Correct.

11 Q. And that holds true for all of the
12 five bullet points that we just discussed, if
13 the submitted contents aren't in line with
14 Shutterstock guidelines, Shutterstock will
15 reject the content, correct?

16 MS. LACKMAN: Objection, calls for
17 speculation.

18 A. To the best of my personal
19 knowledge, yes.

20 Q. Are you aware of Shutterstock's
21 technical and metadata standards?

22 MS. LACKMAN: Objection, vague. Can
23 you refer to a document?

24 Q. Go ahead.

25 A. I am not.

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1 A. ZAMBROWSKI

2 limit, Scott. So any recollection of how
3 you know --

4 MR. BURROUGHS: Are you finished?

5 If you want to add anything else, go
6 ahead, but if you're finished, the
7 witness can answer the question.

8 Q. Go ahead.

9 A. Could you rephrase the question?

10 Q. Sure. Given that you're not a re-
11 viewer, how do you know that Shutterstock
12 reviewers are thoroughly trained on
13 Shutterstock's technical and metadata
14 standards, as well as compliance policies?

15 A. Because as I mentioned, our review
16 coordinators' main responsibility is
17 educating our reviewers on our technical and
18 metadata standards. They are audited, they
19 are trained, they're given feedback
20 questions, they are reliant individuals.

21 Q. Did they tell you, those
22 coordinators, that they trained the
23 reviewers?

24 MS. LACKMAN: Objection. This is
25 outside the scope as harassing. Mr.

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1 A. ZAMBROWSKI

2 Zambrowski, please don't answer the
3 question. This is badgering. This is
4 classic badgering.

5 Q. Are you going to take your
6 attorney's advice?

7 MS. LACKMAN: You're asking a
8 30(b)(6) witness how they know everything
9 they know, the witness is working for the
10 company for five years. That's
11 badgering, that's classic badgering. I'm
12 really ready to call the judge if you're
13 going to continue going down this line.

14 Q. Are you going to take your
15 attorney's advice?

16 A. Yes, I am.

17 Q. Did you ever personally see the
18 coordinators training the reviewers, as we've
19 discussed?

20 MS. LACKMAN: Objection, harassment.
21 You can answer if you wish.

22 A. In a personal capacity, yes, I have.

23 Q. Other than what you told me so far,
24 do you have any other personal knowledge
25 relating to how the reviewers were trained on

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A. ZAMBROWSKI

A. To the best of my knowledge, yes.

Q. So is it Shutterstock that adds the watermark to third party content?

MS. LACKMAN: Objection, asked and answered, vague.

A. Yes, to the best of my knowledge.

Q. Looking at the bullet point below that, We reserve the right to remove any previously accepted content submission; do you see that?

A. Correct.

Q. Does that accurately reflect your understanding that Shutterstock has complete control over the content in its library?

MS. LACKMAN: Objection, calls for a legal conclusion, vague and calls for legal interpretation. You need to define control.

Q. Go ahead.

MS. LACKMAN: If you understand the question.

A. Yes, that's correct, that goes with any content where you upload content that they fully reserve their rights to remove

1 A. ZAMBROWSKI

2 content submitted by an individual.

3 Q. The individual has no say whether or
4 not Shutterstock accepts or removes the
5 content, right?

6 MS. LACKMAN: Objection, vague.

7 Q. Let me rephrase the question. The
8 contributor of the content has no say in
9 whether or not Shutterstock accepts or
10 removes the content, correct?

11 MS. LACKMAN: Objection, vague.

12 A. Individuals can appeal content being
13 removed through the HMCA counter notice.

14 Q. But it's Shutterstock that has the
15 final say as to whether or not a photograph
16 is going to appear on its website?

17 MS. LACKMAN: Objection, asked and
18 answered, calls for a legal conclusion.

19 A. To the best of my personal
20 knowledge, yes.

21 Q. In fact, can Shutterstock remove any
22 photograph from its website at any time for
23 any reason?

24 MS. LACKMAN: Objection, vague, no
25 foundation.

1 A. ZAMBROWSKI

2 A. For the contributor TRS, we make it
3 abundantly clear that we are able to remove
4 content for any reason.

5 Q. And you can do so even if a counter
6 notification is submitted, correct?

7 MS. LACKMAN: Objection, calls for a
8 legal interpretation. Actually, calls
9 for disclosure of legal information, it's
10 privileged. Please don't answer.

11 Q. You're going to accept your
12 attorney's advice there?

13 A. Yes, I'm going to take my attorney's
14 advice.

15 Q. It also indicates on this page that
16 you protect user content. How do you do that
17 at Shutterstock?

18 A. We protect user content by applying
19 a watermark on top of that content so it
20 cannot be easily obtained by any nefarious
21 individual.

22 Q. Do you take any other steps?

23 A. To the best of my personal
24 knowledge, no.

25 Q. We're going to put in front of you a

Page 120

1 A. ZAMBROWSKI

2 Q. Are you aware of any third-party
3 sites, like TinEye, including advertisements
4 from Shutterstock without Shutterstock's
5 direction or consent?

6 MS. LACKMAN: Objection, no
7 foundation, misstates testimony.

8 A. To the best of my personal
9 knowledge, I do not know. I'm not a website
10 developer or an advertiser.

11 Q. So is it more likely than not that
12 if there is a Shutterstock advertisement on
13 TinEye, that TinEye has a relationship with
14 Shutterstock?

15 MS. LACKMAN: Objection, calls for
16 speculation, no foundation.

17 A. I do not know from my personal
18 capacity.

19 Q. Has Shutterstock ever reached out to
20 TinEye and advised TinEye to stop displaying
21 the image at issue in this case?

22 MS. LACKMAN: Objection, no
23 foundation, not within the scope, asked
24 and answered. I'm sure there are other
25 objections.

1 A. ZAMBROWSKI

2 A. To the best of my personal
3 knowledge, no.

4 Q. And has Shutterstock ever reached
5 out to any third party and told them to
6 remove the photograph at issue in this case
7 from their website?

8 A. Can you define third party?

9 Q. Any party that's not Shutterstock.

10 A. I'm afraid I don't understand the
11 question. Could you rephrase that?

12 Q. Sure. Has Shutterstock ever
13 contacted any company other than Shutterstock
14 And advised them to remove the image that's
15 at issue in this case?

16 MS. LACKMAN: Objection, no
17 foundation.

18 A. To the best of my personal
19 knowledge, no.

20 Q. I'll put a document in front of you
21 marked Steinmetz 47, which I believe is a
22 screenshot. We're going to mark that next in
23 line.

24 (Whereupon, Exhibit 6 was
25 referenced.)

1 A. ZAMBROWSKI

2 photograph was displayed online via
3 Shutterstock?

4 MS. LACKMAN: Objection. What
5 photograph? Do you see a photograph?
6 Maybe there is a different document that
7 you have.

8 Q. Do you understand the question?

9 A. Please elaborate.

10 Q. Sure. Do you understand this
11 particular photograph at issue in this case,
12 correct, the one taken by George Steinmetz?

13 MS. LACKMAN: Objection to the
14 characterization of photograph.

15 Q. Do you understand? We looked at it
16 earlier. We can bring the exhibit back up
17 and refresh your recollection if you don't
18 remember.

19 A. Yes, I recall that earlier image.

20 Q. Other than the Shutterstock site,
21 what other websites did that image appear as
22 distributed via Shutterstock?

23 MS. LACKMAN: Objection, outside the
24 scope, asked and answered.

25 A. Personally, I do not know.

1 A. ZAMBROWSKI

2 Q. If you wanted to figure that out,
3 where would you look?

4 A. Personally, if I had to take an
5 educated guess, I would contact the API team
6 and see how those agreements are working and
7 also where our content is being distributed
8 in some capacity.

9 Q. Before your deposition today, you
10 didn't contact anyone on the API team or at
11 Shutterstock to see where the content at
12 issue in this case was distributed; isn't
13 that correct?

14 A. Personally, I did not.

15 Q. Did anybody, to your knowledge?

16 A. To the best of my personal
17 knowledge, no one has.

18 Q. So as we sit here today, no one at
19 Shutterstock, to your knowledge, has looked
20 to see where the image at issue in this case
21 was displayed online, correct?

22 MS. LACKMAN: Objection. The
23 question is outside the scope, so if you
24 happen to know, you can answer.

25 A. I do not know.

1 A. ZAMBROWSKI

2 A. We have a number of different
3 licensing agreements that are now offered to
4 customers. A standard basic one allows
5 specific usages. An enhanced one is more
6 compound, but our standard one is that would
7 not include allowing the content to be used
8 on merchandising, for example.

9 Q. Does Shutterstock offer plans that
10 allow for a certain number of downloads per
11 day or per week or per month?

12 MS. LACKMAN: Objection, outside the
13 scope.

14 A. Yes.

15 Q. And is it accurate that customers
16 choose Shutterstock because of the high
17 quality licensed images that it offers to
18 customers?

19 MS. LACKMAN: Objection, calls for
20 speculation.

21 A. I personally would say yes.

22 Q. And part of that is because
23 Shutterstock ensures that the photography
24 that it displays for license on its website
25 is high quality, right?

1 A. ZAMBROWSKI

2 MS. LACKMAN: Objection, vague.

3 A. I personally would agree with that.

4 Q. I'm going to put a document in front
5 of you marked as Exhibit 11.

6 (Whereupon, Exhibit 11 was
7 referenced.)

8 Q. And while she's putting that up,
9 does Shutterstock's API serve up links to
10 JPEG files that it provides that API to third
11 parties?

12 A. I'm sorry, I don't understand.

13 Q. Have you worked at all with
14 Shutterstock's API?

15 A. Personally, I did not.

16 Q. Do you understand how Shutterstock's
17 API works?

18 A. I basically know what it does but
19 nothing of the working mechanisms involving
20 how it's made.

21 Q. What's your understanding of how
22 Shutterstock's API works?

23 MS. LACKMAN: Objection, vague.

24 A. My personal understanding of how API
25 works is it's a system in place that allows

A. ZAMBROWSKI

MS. LACKMAN: Objection to the term
APA.

MR. BURROUGHS: API.

MS. LACKMAN: And outside the scope,
no foundation.

Q. You understand the question?

A. No. Could you repeat the question,
please?

Q. Does Shutterstock's API serve up
links to third parties that are connected
directly to the JPEG files of Shutterstock's
photography assets?

MS. LACKMAN: Objection, vague,
outside the scope.

A. To the best of my understanding,
yes.

Q. Have you seen the material in
Exhibit 11 before?

MS. LACKMAN: Objection. Photos and
ownership can be confusing, but this is
way outside the scope. This has got a
toxic stamp on it, I believe. It's filed
on a different date. So do you mean to
include this, or are we confused?

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1 A. ZAMBROWSKI

2 Q. What is your understanding of what
3 SEO is?

4 A. I just understand that's search
5 engine optimization.

6 Q. Does Shutterstock use SEO to
7 increase visitors to its website?

8 MS. LACKMAN: Objection, outside the
9 scope, no foundation, misstates what SEO
10 is.

11 A. Yes. Any website would use SEO.

12 Q. Does it use data from the images up-
13 loaded by contributors as part of its SEO
14 campaign?

15 MS. LACKMAN: Objection, no
16 foundation, outside the scope.

17 A. I personally do not know.

18 Q. Does Shutterstock offer high-res
19 images to its customers?

20 MS. LACKMAN: Objection, vague as to
21 offer.

22 A. Shutterstock downloads high-res
23 images.

24 Q. What API does Shutterstock have,
25 what are they used for?

1 A. ZAMBROWSKI

2 Q. Does this exhibit indicate to you if
3 and when this image was locked?

4 MS. LACKMAN: Can you scroll down?

5 I can't see the whole exhibit.

6 A. Yes, based on the resolved date,
7 September 21, '22.

8 Q. And do you know if that was the
9 first action taken in connection with the
10 image at issue in this case?

11 MS. LACKMAN: Objection, vague.

12 A. What action?

13 Q. From this exhibit, it appears to be
14 the locking of the image.

15 MS. LACKMAN: Objection. Is there a
16 question?

17 A. I don't understand. Could you
18 rephrase the question?

19 Q. Let's scroll back up. Do you see
20 there where it indicates that the recipient
21 of this ticket should lock the image?

22 A. Yes.

23 Q. Was that the first action taken in
24 connection with the image at issue in this
25 case?

1 A. ZAMBROWSKI

2 A. Yes, that's correct.

3 Q. And that Shutterstock blocked access
4 to the public from the photograph at issue in
5 this case at that time.

6 MS. LACKMAN: Objection, misstates
7 testimony.

8 Q. Is that accurate?

9 A. Shutterstock blocked the capability
10 to be licensed from its portfolio.

11 Q. It blocked public access to the
12 photograph?

13 MS. LACKMAN: Objection, vague.

14 A. Can you define public?

15 MS. LACKMAN: Asked and answered.

16 Q. Anybody outside Shutterstock.

17 A. To the best of my knowledge, yes.

18 Q. Do you recall that the takedown
19 notice was sent sometime in April 2021?

20 A. That sounds about right.

21 Q. Did Shutterstock give an explanation
22 as to why the image wasn't blocked between
23 April and September 2021?

24 MS. LACKMAN: Objection, vague as to
25 the image.

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1 A. ZAMBROWSKI

2 A. As mentioned, I don't know what
3 locking an image refers to or what that
4 actually means.

5 Q. Did Shutterstock have any
6 explanation as to why it didn't take any
7 additional action, other than what you told
8 me so far, with suspension between April of
9 2021 and whenever this ticket was issued?

10 MS. LACKMAN: Objection, misstates
11 testimony, misstates documents and our
12 records that are deliberately withheld
13 from the witness.

14 Q. Go ahead.

15 A. The document that was provided to me
16 in 2021 was the takedown notice or the
17 requirement for the takedown notice to
18 suspend content which is infringing on the
19 copyright holder.

20 Q. So does Shutterstock have any other
21 explanation for why it waited until
22 September 2021 to take the action that's
23 reflected in this exhibit?

24 MS. LACKMAN: Objection, vague,
25 compound.

1 A. ZAMBROWSKI

2 A. I do not know personally.

3 Q. Do you know if Shutterstock ever
4 acted on the ticket that we're looking at in
5 Exhibit 12?

6 MS. LACKMAN: Objection, asked and
7 answered.

8 A. As I mentioned, it says completed
9 activity.

10 Q. So that leads you to believe it was
11 completed?

12 A. Correct.

13 Q. You may want to scroll down, but do
14 you know when the ticket was submitted?

15 A. Yes. It says it was created
16 September 21, 2020.

17 Q. Let's scroll back up. Do you know
18 who Jefferson Frazer is?

19 A. Personally, I do not.

20 Q. Have you worked with him on anything
21 at Shutterstock?

22 A. Personally, I don't know.

23 Q. The spelling for that is
24 J-E-F-F-E-R-S-O-N F-R-A-S-E-R, I believe. Do
25 you have any reason to believe that

1 A. ZAMBROWSKI

2 Shutterstock assigned another ID number other
3 than this assigned number to the photograph
4 at issue in this case?

5 A. Shutterstock assigned a Google ID to
6 each individual content. It does not modify
7 the content ID, or asset ID as you put it.

8 Q. When you're referring to that number
9 inhouse, what do you call it?

10 A. Inhouse we refer to it as asset ID,
11 content ID, image ID, video ID.

12 Q. For a photograph, do you use asset
13 ID?

14 A. Asset ID or image ID.

15 Q. And is it your testimony that
16 Shutterstock does not provide that asset ID
17 to third parties, like other websites?

18 A. To the best of my personal
19 knowledge, yes.

20 Q. Let's look at Exhibit 6. We looked
21 at this one before, we'll put it back up on
22 the screen. You recall looking at this site,
23 StockFresh?

24 A. Yes.

25 Q. The URL with the StockFresh name, do

1 A. ZAMBROWSKI

2 you see a numerical sequence at the end of
3 the URL stream?

4 A. Yes.

5 Q. Does that appear to be the same
6 asset ID for the photograph at issue in this
7 case as reflected in the Shutterstock
8 database?

9 A. Yes -- I believe so.

10 Q. Do you know, does Shutterstock have
11 any idea where StockFresh could have attained
12 that asset ID other than through
13 Shutterstock?

14 MS. LACKMAN: Objection, foundation.

15 A. Personally, I believe they obtained
16 it through Shutterstock's API.

17 Q. So is it Shutterstock's testimony
18 that Shutterstock serves up the asset ID
19 number through its API to third parties?

20 MS. LACKMAN: Objection, lack of
21 foundation, misstates testimony.

22 A. To the best of my personal knowledge
23 here, yes.

24 Q. And then, would that asset ID number
25 appear with the Shutterstock photograph

1 A. ZAMBROWSKI

2 that's referenced by that number?

3 MS. LACKMAN: Objection, vague.

4 A. It would only appear here if the
5 content is live on Shutterstock's platform.

6 Q. But if it was live, it would appear
7 here?

8 MS. LACKMAN: Objection, calls for
9 speculation.

10 A. To the best of my personal
11 knowledge, yes.

12 Q. And if it wasn't live, it wouldn't
13 appear on any of these third-party sites,
14 correct?

15 MS. LACKMAN: Objection, misstates
16 testimony.

17 A. Yes.

18 Q. Does Shutterstock allow previews of
19 images to users?

20 MS. LACKMAN: Objection, vague as to
21 previews.

22 A. Can you rephrase, please?

23 Q. Are you able to see the full image
24 without being logged in?

25 A. Logged in as in what?

1

A. ZAMBROWSKI

2

Q. Logged in as a licensee or a

3

potential customer.

4

A. Customers and licensees are able to

5

see full images that have the Shutterstock

6

watermark.

7

Q. Does Shutterstock allow viewers to

8

download images without purchasing one of the

9

memberships that we talked about earlier?

10

A. No.

11

Q. Does Shutterstock offer any plug-ins

12

or add-ons that allow its customers to use

13

images on its site?

14

MS. LACKMAN: Objection, vague.

15

A. Can you define what type of plug-ins

16

you mean? Is it like a Chrome extension?

17

Q. Yes, Chrome extension would be one,

18

something for Microsoft Suite would be

19

another. Any plug-ins or add-ons that

20

Shutterstock offers in connection with the

21

images.

22

MS. LACKMAN: Vague, outside the

23

scope.

24

A. I personally understand that we do

25

have a few plug-ins, but I do not know what

1 A. ZAMBROWSKI

2 Q. More than a month?

3 A. I don't recall.

4 Q. Let me ask you, for Shutterstock,
5 what is a reasonable amount of time to
6 respond to a DMCA notice?

7 MS. LACKMAN: Objection. I'm going
8 to instruct the witness not to answer.
9 Calls for a legal interpretation.

10 MR. BURROUGHS: We're just going to
11 indicate on the record that we'll be
12 moving to eliminate and exclude any
13 evidence of the Section 512 defense
14 because the witness is not being allowed
15 to answer questions on the 512 defense.

16 MS. LACKMAN: You're asking the
17 witness to testify to what's a reasonable
18 period of time for removal under the law.
19 The witness is not a legal expert and
20 he's not designated as a legal expert,
21 nor is it a topic in your deposition
22 notice. If you would like to point me to
23 a topic in your deposition notice that we
24 did not object to where it says the
25 witness will be testifying as to what a

1 A. ZAMBROWSKI

2 reasonable period is under the law to
3 remove the image, to consult with someone
4 to investigate and to remove, then we can
5 have the witness testify to that, but I
6 don't see that in any of your deposition
7 notice, and I believe you're asking him
8 for an interpretation of the law that he
9 would understand only from conversations
10 with counsel, if he has any understanding
11 as to what this is. You can make your
12 motion to eliminate.

13 MR. BURROUGHS: I disagree.

14 Q. But are you going to take your
15 attorney's advice and refuse to answer the
16 question?

17 MS. LACKMAN: Mr. Burroughs, are you
18 going to tell me which topic this relates
19 to and where it says that he's supposed
20 to talk about the reasonableness of a
21 notice and the time and the response,
22 especially considering that you are not
23 showing him documents? So if you want to
24 show me the notice that has to do with
25 that, then we can go into it, or we can

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1 A. ZAMBROWSKI

2 concur off the record as to whether he
3 can give an answer to this question in a
4 way that doesn't reveal privileged
5 information.

6 Q. Are you going to take your
7 attorney's advice and refuse to answer?

8 A. I will take my attorney's advice.

9 (Whereupon, recess was taken.)

10 MR. BURROUGHS: We're back on the
11 record.

12 Q. Artur, you understand you're still
13 under oath?

14 A. Yes.

15 MR. BURROUGHS: I just want to clean
16 something up. The cease and desist
17 letter we were looking at is to be marked
18 Exhibit 14.

19 Q. You recall Shutterstock receiving
20 this demand letter, correct?

21 A. Correct.

22 Q. We're going to put a document in
23 front of you marked as Exhibit 15, STK 666.
24 Do you recognize this document?

25 A. Yes.

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A. ZAMBROWSKI

MS. LACKMAN: The screenshot is a little challenging. Do you mind scrolling back down?

Q. If you want to see a particular portion of the document, please let us know and we'll scroll to wherever you want to go in the document.

A. Yes, this is my acknowledgment to the individual who submitted the cease and desist that we've taken action.

Q. And that's Julia?

A. That's what it says.

Q. Here you're going by the fake name of right?

A. It is an alias, correct.

Q. It indicates that is on the IP team at Shutterstock, Inc.; is that correct?

A. Correct.

Q. When did you respond to Julia in connection with the cease and desist letter that was marked as Exhibit 14?

A. It's dated above, on May 11, 2021.

Q. And what are you stating to Julia in that response? And of course, going through

Redactions per Defendant's request.

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1 A. ZAMBROWSKI

2 the copyright holder. This was never
3 identified within the cease and desist, let
4 alone the cease and desist was not a standard
5 DMCA notice.

6 Q. So it's your option that it doesn't
7 violate those policies and guidelines; is
8 that correct?

9 A. To the best of my personal
10 understanding, yes.

11 Q. And Shutterstock maintaining a
12 publicly viewable copy of the image seen in
13 Exhibit 13 accords with Shutterstock's
14 guidelines and policies, doesn't it?

15 MS. LACKMAN: Objection,
16 mischaracterizes the document,
17 mischaracterizes the law, calls for a
18 legal conclusion, asked and answered,
19 mischaracterizes the cease and desist
20 letter.

21 Q. Go ahead.

22 A. Could you repeat the question?

23 Q. Sure. Maintaining a public viewable
24 copy of the image that you see in Exhibit 13
25 complies with Shutterstock's guidelines and

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1 A. ZAMBROWSKI

2 policies, doesn't it?

3 MS. LACKMAN: Objection,

4 mischaracterizes the document,

5 mischaracterizes the testimony, asked and

6 answered, argumentative.

7 Q. Go ahead.

8 MS. LACKMAN: Assumes facts not in

9 evidence.

10 A. No, this does not.

11 Q. Why not?

12 MS. LACKMAN: Asked and answered.

13 A. My personal understanding is that

14 the regular acknowledged JPEG form of this

15 content was asked to be removed by the cease

16 and desist/DMCA notice that was provided.

17 Q. Is that your entire answer?

18 A. Yes.

19 Q. Is the image in Exhibit 13 an image
20 that Shutterstock keeps in, quote, unquote,
21 deep storage?

22 MS. LACKMAN: Objection, vague as to
23 image.

24 A. Yes, I believe so, to be used within
25 our MD5 system after review, so no other

1 A. ZAMBROWSKI

2 individual would be able to upload this type
3 of content on any third-party sites.

4 Q. So is it fair to say that
5 Shutterstock makes visible to the public the
6 material saved in its, quote, unquote, deep
7 storage?

8 MS. LACKMAN: Objection, asked and
9 answered, mischaracterizes the testimony,
10 misstates the testimony, vague as to
11 time.

12 A. No, it does not. It does not make
13 these things public at all.

14 Q. Well, the photograph we're looking
15 at in Exhibit 13 was viewable to the public
16 in September of 2021, months after receiving
17 the cease and desist letter, wasn't it?

18 MS. LACKMAN: Objection, asked and
19 answered, no foundation, compound.

20 A. The cease and desist letter never
21 identified specifically the JPEG form of this
22 piece of content.

23 Q. And it's Shutterstock's position
24 that because it didn't, that Shutterstock had
25 no obligation to remove the material under

1 A. ZAMBROWSKI

2 its policies and guidelines, correct?

3 A. That would be under the DMCA, not
4 Shutterstock's guidelines.

5 Q. What about under Shutterstock's
6 guidelines?

7 MS. LACKMAN: Objection, outside the
8 scope, calls for speculation, vague as to
9 time.

10 Q. Go ahead.

11 A. I personally, under my own self,
12 believe that this might have been a glitch.
13 It should have been removed at the time it
14 was suspended. A JPEG version is not easily
15 searchable, it's not easily obtainable. It
16 has Shutterstock's watermark and trademark
17 visible within the content.

18 Q. Does this one also include
19 additional watermarks and trademarks that we
20 haven't seen on the versions that we looked
21 at before?

22 MS. LACKMAN: Objection as to
23 trademarks, calls for a legal conclusion.

24 A. This also shows the contributor's
25 user name who uploaded the content.

1 A. ZAMBROWSKI

2 A. As I mentioned this is not a static
3 document, it is constantly modified and
4 changed. It does not hold any records.

5 Q. Did you look to see if you made a
6 copy of the protocol sheet in connection with
7 the infringement at issue in this case?

8 A. Yes, I have, but this is just so I
9 don't interfere with anyone else's doing the
10 same type of protocol. This is just to have
11 a copy for myself for my own editing
12 purposes.

13 Q. Do you recall selecting the tab as
14 set forth in Exhibit 2 and including that
15 information?

16 A. When?

17 Q. At any time in connection with the
18 infringement at issue in this case.

19 A. Personally, within this case, I do
20 not recall.

21 Q. Do you recall filling in the
22 contributor display name and the other
23 information set forth in paragraph 3 of the
24 account termination protocol?

25 A. Personally, I do not recall.

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A. ZAMBROWSKI

Q. Do you recall completing step 4 of the termination protocol?

A. Personally, I do not recall.

Q. Do you recall completing step 5?

A. Personally, I do not recall.

Q. Step 6?

A. I do not recall.

Q. Step 7?

A. I do not recall.

Q. Step 8?

A. I do not recall.

Q. Do you know if anyone at Shutterstock completed those steps in connection with the infringement at issue in this case?

A. I believe the account was officially terminated under Andrew Raff's advisement.

Q. Do you recall Mr. Raff completing the eight steps in the protocol?

A. I do not recall.

Q. Do you recall anyone at Shutterstock completing the eight steps in the protocol?

A. In regards to this case?

Q. In regard to the infringement at

1 A. ZAMBROWSKI

2 issue in this case.

3 A. No, I do not recall.

4 Q. Have you gone back to look in
5 connection with this case or deposition to
6 see if anyone complied with the protocol
7 that's set forth in this exhibit?

8 A. I personally do not recall.

9 Q. And you haven't looked for evidence
10 or asked anybody about it in advance of
11 today's deposition, right?

12 A. Correct.

13 Q. I'm putting a document in front of
14 you marked Exhibit 18, STK 56 and 57.

15 (Whereupon, Exhibit 18 was
16 referenced.)

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. What's this document?

20 A. This is a contributor's Admin Mason
21 brief.

22 Q. Do you understand that this document
23 refers to the account for the individual
24 Shutterstock account holder who uploaded the
25 photograph at issue in this case?

1 A. ZAMBROWSKI

2 A. I personally don't know.

3 Q. You have no understanding as to the
4 material in those sections, correct?

5 A. Personally, I do not.

6 Q. Do you understand that Exhibit 19
7 relates to the approval of the image at issue
8 in this case for display on the Shutterstock
9 website?

10 A. Yes.

11 Q. Do you understand that L. Benetti,
12 whoever he or she is, on behalf of
13 Shutterstock reviewed the content and
14 approved it for display on the Shutterstock
15 website?

16 A. Given the context of this document,
17 yes.

18 Q. So does this document indicate to
19 you that Shutterstock reviewed the photograph
20 at issue in this case and approved it for
21 display and offering for license on its
22 website?

23 A. Correct.

24 Q. Who added the key words, if you
25 know?

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1 A. ZAMBROWSKI

2 Shutterstock's website for a mobile unit?

3 MS. LACKMAN: Objection, asked and
4 answered like six hours ago.

5 Q. Go ahead.

6 A. No, I don't believe so.

7 Q. Is affiliate traffic reflected on
8 this document, meaning traffic of yours that
9 used the photograph at issue on third-party
10 sites?

11 MS. LACKMAN: Objection, asked and
12 answered.

13 A. As a Shutterstock affiliate, when a
14 customer clicks license or use content on an
15 affiliate site, it transfers them back to
16 Shutterstock, so to answer your question,
17 yes.

18 Q. But it doesn't reflect the traffic
19 to those websites.

20 MS. LACKMAN: Objection, vague.

21 A. As a personal understanding, they do
22 not.

23 Q. Let's look at Exhibit 20, which is
24 STK 1 to 3.

25 (Whereupon, Exhibit 20 was

1 A. ZAMBROWSKI

2 can only assume so.

3 Q. Do you know if these terms have been
4 amended at any time since the beginning of
5 2021?

6 A. From my personal understanding, I do
7 not know.

8 Q. But you understand that these API
9 terms of service relate to these third-party
10 sites that use Shutterstock's API?

11 A. Yes.

12 Q. Does Shutterstock have any
13 relationship with a company named HelloRF?

14 A. From my personal understanding, yes.

15 Q. What's that relationship?

16 MS. LACKMAN: Objection to the
17 extent it calls for a legal
18 interpretation. If you have an
19 understanding.

20 Q. Go ahead.

21 MS. LACKMAN: I don't want to bind
22 you as a lawyer. You can describe it if
23 you have an understanding. I just want
24 to make sure that you're not a lawyer
25 giving a legal opinion.

1 A. ZAMBROWSKI

2 A. My basic personal understanding is
3 that it's an authorized partner of
4 Shutterstock's.

5 Q. Does Shutterstock own the HelloRF
6 company, in part?

7 MS. LACKMAN: Objection, calls for
8 speculation.

9 A. Who is the parent company in
10 question?

11 MS. LACKMAN: Outside the scope.

12 Q. Have you ever heard of a company
13 called ZCool?

14 A. Yes, I personally have.

15 Q. Who is ZCool?

16 A. From my personal basic
17 understanding, it's another Shutterstock
18 authorized partner.

19 Q. Do you know if Shutterstock invested
20 in ZCool?

21 MS. LACKMAN: Objection, vague.

22 A. I personally do not know.

23 Q. Your understanding, though, is that
24 there is some sort of partnership between the
25 two?

C E R T I F I C A T E

STATE OF NEW YORK)

SS.:)

COUNTY OF KINGS)

I, SARA FREUND, CSR, a Notary Public
within and for the State of New York, do
hereby certify:

THAT ARTUR ZAMBROWSKI, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is
a true record of the testimony given by such
witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand on this 28th day of July, 2022.



SARA FREUND, CSR